IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.12685 OF 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M/S. RAVANI OIL MILL

Versus

DISTRICT SUPPLIES OFFICER & ORS.

Appearance:

1. Special Civil Application No. 12685 of 2004

MR. NIRAV C. THAKKAR for Petitioner

MR. DEEPAK V. PATEL for Respondents

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 29/04/2005

ORAL JUDGEMENT

1. By way of this petition, the petitioner has challenged the order dated 13th January, 2004 passed by the learned 2nd Joint Civil Judge (S.D.), Jamnagar below Application-Exh.189 in Special Civil Suit No.163 of 1990 whereby the application (for bringing legal heirs on

record) was rejected.

2. Mr.Nirav C.Thakkar, learned Advocate for the petitioner, contended that requirement under the law to bring the legal heirs on record is 90 days and there was a delay of 58 days in the present case. Hence, the impugned order is required to be quashed and delay, if any, caused in bringing heirs on record could have been condoned by the trial Court. He, therefore, submitted that the petition is required to be allowed.

3. Mr.Deepak V.Patel, learned Advocate for the respondents, submitted that if the application for bringing heirs on record is preferred after the limitation period prescribed under the law and that too, without explaining the delay by not filing a separate application for condonation of delay, then, the same is rightly not accepted by the trial Court and the petition is required to be dismissed.

4. Having heard Mr.Nirav C.Thakkar, learned Advocate for the petitioner, and Mr.Deepak V.Patel, learned Advocate for the respondents and having perused the relevant record of the case, including the affidavit-in-reply filed by the respondents, this Court is of the view that the view taken by the trial Court is too technical looking to the averments made in the original application and facts narrated in the petition. This Court is of the opinion that the trial Court ought to have condoned the delay and allowed the Application-Exh.189. In that view of the matter, the delay is condoned and the Application-Exh.189 is allowed. The impugned order dated 13th January, 2004 passed by the learned 2nd Joint Civil Judge (S.D.), Jamnagar below Application-Exh.189 in Special Civil Suit No.163 of 1990 is quashed and set aside. Rule is made absolute to the aforesaid extent. However, since the respondent-Corporation has incurred expenses of this litigation, the petitioner shall pay Rs.5,000=00 by way of costs to the respondent-Corporation.

[K.S.Jhaveri, J.]

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